

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CLARISSA BALDERAS

VS.

**FARMERS INSURANCE GROUP dba
FIRE INSURANCE EXCHANGE**

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C.A. NO. 1:16-cv-951

PLAINTIFF'S FIRST AMENDED ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES **CLARISSA BALDERAS**, Plaintiff, complaining of **TEXAS FARMERS INSURANCE COMPANY**, Defendant, and files this First Amended Original Complaint, and in connection therewith would respectfully show the Court as follows:

PARTIES

1. Plaintiff was at all relevant times residents of Hays County, Texas and is the owner of the insured property located at 915 Sturgeon, San Marcos, Texas 78666 and has been at all times material to the allegations set forth in this Complaint.

2. Defendant **TEXAS FARMERS INSURANCE COMPANY** has appeared and answered herein.

JURISDICTION AND VENUE

3. This action arises under the National Flood Insurance Act, as amended, 82 Stat. 583, 42 U.S.C. Section 4001, *et seq.*, pursuant to the insurance contract issued to Plaintiff, providing flood insurance on Plaintiff's residence. This action, having arisen under an applicable federal statute, namely, 42 U.S.C. Section 4072, requires the application of federal law pursuant to the general federal jurisdiction provisions of 28 U.S.C. Section 1331.

4. The insured property is situated in the Western District of Texas, Austin Division, and venue is proper in this Court pursuant to 42 U.S.C. Section 4072.

FACTUAL ALLEGATIONS - BREACH OF CONTRACT

5. Defendant issued an SFIP to the Plaintiff, namely, Policy No. 06001169822015, for a one (1) year period, whereby Defendant agreed to pay the Plaintiff for any direct physical loss to the insured property caused by or from a "flood" as defined by the Policy. The SFIP covered flood damage to the Plaintiff's residence and its contents to those limits set forth in the Policy subject to a deductible.

6. On or about May 26, 2015, a tremendous amount of rain fell in the San Marcos area causing widespread flooding throughout the area. The flooding directly and proximately caused severe damage to Plaintiff's property which in turn has led to additional damages. Compliance with FEMA regulations and guidelines require an extensive remediation and rebuild of Plaintiff's property so as to render any renovations or rebuild prior to this letter useless.

7. Plaintiff timely notified the Defendant of her loss and the claim was adjusted by or on behalf of Defendant. As a result, Defendant denied full coverage and only made a partial payment for Plaintiff's damages, which payment is insufficient to fully compensate Plaintiff for her damages.

8. Plaintiff disagrees with Defendant's denial of and the adjustment of Plaintiff's damages and losses and alleges that Plaintiff has not been fully and appropriately compensated for the direct physical losses sustained as a result of the flood.

9. The above described SFIP was in full force and effect at the time of Plaintiff's loss and Plaintiff has performed all conditions precedent entitling Plaintiff to the coverage, payments, and benefits afforded by said Policy.

10. Defendant has failed or refused to pay the full amount due under the SFIP and has otherwise failed or refused to comply with the terms and provisions of the Policy. Accordingly, Defendant has breached the contract of insurance herein described.

11. As a direct and proximate consequence of the Defendant's breach of said contract, Plaintiff has incurred the following damages: actual damages to the Insured Property to fully and completely remediate, repair, and rebuild Plaintiff's property as required.

WHEREFORE, the Plaintiff demands judgment against the Defendant for the amount due under the SFIP, costs and case expenses incurred in connection with the filing and prosecution of this action, and, any and all other appropriate relief to which Plaintiff may be entitled.

Respectfully submitted,

**LAW OFFICES OF KEVIN R. MICHAELS,
P.C.**

By: /s/ Kevin R. Michaels
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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was filed electronically on this 7th day of October 2016. Additionally, parties may access this filing through the Court's system and notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Kevin R. Michaels
Kevin R. Michaels